

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KENNETH BRIAN CASTOR

Claimant

VS.

HAY & FORAGE INDUSTRIES

Respondent

Self-Insured

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Docket No. 236,155

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on October 29, 1998.

ISSUES

The ALJ found that claimant failed to sustain his burden of proving personal injury by accident arising out of and in the course of his employment. On appeal, claimant disputes that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed.

Claimant alleges that he suffered a low back injury and right leg pain caused by work activities over a period of time with symptoms beginning in August 1997 and continuing through the last date of his employment on March 21, 1998. Based upon inconsistencies in the various versions of the events given by claimant to the health care personnel and in his testimony, the ALJ concluded claimant failed to sustain his burden proving that he suffered personal injury by accident arising out of and in the course of his employment.

The Appeals Board agrees with and affirms the conclusion by the ALJ. Claimant gave a history to the initial orthopedic physician indicating he had low back pain on and off for three or four years with no known injury. The Appeals Board generally defers to the ALJ's assessment of credibility of live witnesses. For these combined reasons, the Appeals Board finds that the Order by the ALJ should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on October 29, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

c: Gary A. Winfrey, Wichita, KS
Larry D. Shoaf, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director